

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Samuel Love,

Plaintiff,

v.

1651 Tiburon Hotel, LLC, a
Delaware Limited Liability
Company;

Defendant,

Case No. 3:21-cv-01359-SK

**First Amended Complaint For
Damages And Injunctive
Relief For Violations Of:**
Americans With Disabilities Act;
Unruh Civil Rights Act

Plaintiff Samuel Love complains of 1651 Tiburon Hotel, LLC, a
Delaware Limited Liability Company; (“Defendant”), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is
substantially limited in his ability to walk. He is a paraplegic. He uses a
wheelchair for mobility.

2. Defendant 1651 Tiburon Hotel, LLC, a Delaware Limited Liability
Company owns and operates The Lodge at Tiburon located at 1651 Tiburon

1 Blvd., Tiburon, California currently and at all times relevant to this complaint.

2 3. Plaintiff does not know the true names of Defendants, their business
3 capacities, their ownership connection to the property and business, or their
4 relative responsibilities in causing the access violations herein complained of,
5 and alleges a joint venture and common enterprise by all such Defendants.
6 Plaintiff is informed and believes that each of the Defendants herein, is
7 responsible in some capacity for the events herein alleged, or is a necessary
8 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
9 the true names, capacities, connections, and responsibilities of other
10 Defendants are ascertained.

11 **JURISDICTION:**

12 4. The Court has subject matter jurisdiction over the action pursuant to 28
13 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
14 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

15 5. Pursuant to supplemental jurisdiction, an attendant and related cause
16 of action, arising from the same nucleus of operative facts and arising out of
17 the same transactions, is also brought under California's Unruh Civil Rights
18 Act, which act expressly incorporates the Americans with Disabilities Act.

19 6. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
20 founded on the fact that the real property which is the subject of this action is
21 located in this district and that Plaintiff's cause of action arose in this district.

22
23 **PRELIMINARY STATEMENT**

24 7. This is a lawsuit challenging the reservation policies and practices of a
25 place of lodging. Plaintiff does not know if any physical or architectural
26 barriers exist at the hotel and, therefore, is not claiming that that the hotel has
27 violated any construction-related accessibility standard. Instead, this is about
28 the lack of information provided on the hotel's reservation website that would

1 permit plaintiff to determine if there are rooms that would work for him.

2 8. After decades of research and findings, Congress found that there was
3 a “serious and pervasive social problem” in America: the “discriminatory
4 effects” of communication barriers to persons with disability. The data was
5 clear and embarrassing. Persons with disabilities were unable to “fully
6 participate in all aspects of society,” occupying “an inferior status in our
7 society,” often for no other reason than businesses, including hotels and
8 motels, failed to provide information to disabled travelers. Thus, Congress
9 decided “to invoke the sweep of congressional authority” and issue a “national
10 mandate for the elimination of discrimination against individuals with
11 disabilities,” and to finally ensure that persons with disabilities have “equality
12 of opportunity, full participation, independent living” and self-sufficiency.

13 9. As part of that effort, Congress passed detailed and comprehensive
14 regulations about the design of hotels and motels. But, as importantly,
15 Congress recognized that the physical accessibility of a hotel or motel means
16 little if the 61 million adults living in America with disabilities are unable to
17 determine which hotels/motels are accessible and to reserve them. Thus,
18 there is a legal mandate to provide a certain level of information to disabled
19 travelers.

20 10. But despite the rules and regulations regarding reservation procedures,
21 a 2019 industry article noted that: “the hospitality sector has largely
22 overlooked the importance of promoting accessible features to travelers.”

23 11. These issues are of paramount important. Persons with severe
24 disabilities have modified their own residences to accommodate their unique
25 needs and to ameliorate their physical limitations. But persons with disabilities
26 are never more vulnerable than when leaving their own residences and having
27 to travel and stay at unknown places of lodging. They must be able to ascertain
28 whether those places work for them.

FACTUAL ALLEGATIONS:

12. Plaintiff planned on making a trip in August of 2021 to the Tiburon, California, area.

13. He chose The Lodge at Tiburon located at 1651 Tiburon Blvd., Tiburon, California because this hotel was at a desirable price and location.

14. Due to Plaintiff's condition, he is unable to, or seriously challenged in his ability to, stand, ambulate, reach objects, transfer from his chair to other equipment, and maneuver around fixed objects.

15. Thus, Plaintiff needs an accessible guestroom and he needs to be given information about accessible features in hotel rooms so that he can confidently book those rooms and travel independently and safely.

16. On February 1, 2021, while in California, Plaintiff went to The Lodge at Tiburon reservation website at <https://www.lodgeattiburon.com/> seeking to book an accessible room at the location.

17. This website reservation system is owned and operated by the Defendants and permits guests to book rooms at The Lodge at Tiburon.

18. Plaintiff found that there was insufficient information about the accessible features in the "accessible rooms" at the Hotel to permit him to assess independently whether a given hotel room would work for him.

19. There is a general accessibility tab that identifies accessibility features at the hotel. But the only accessible features identified for the actual ADA King Bed guestroom are: (1) roll-in shower with bench and hand-held showerhead; (2) grab bars at toilet; and (3) "accessible" sink. That is the *entirety* of the information provided about any accessible feature that might exist in any guestroom at the hotel.

20. The following is a screen grab that represents the entirety of information about the accessibility of the ADA King guestroom:

About This Room

Beauty abounds in Marin County, and you'll have views of the town, our landscaped grounds and garden, or the surrounding hills in our Tiburon King ADA-compliant room with a roll-in shower.

The bathroom has a shower bench, handheld showerhead, bars around the toilet, and a wheelchair-accessible sink.

21. Due to this remarkable lack of information, plaintiff was denied his right to have the hotel identify and describe accessibility features in enough detail to permit an independent assessment regarding whether any given hotel room would work for him.

22. The problem for the plaintiff is that in no location—anywhere on the hotel's website—is there *any* information about the accessibility of the bed, desk, or sink.

23. Because the plaintiff is in a wheelchair and needs to pull up directly adjacent to the bed in order to transfer, the plaintiff must be informed that the bed is accessible. This is often a big problem in hotel rooms but, here, the hotel says nothing about the accessibility of the bed, i.e., the primary function of the bedroom.

24. Plaintiff has had tremendous difficulty using desks and tables that did not provide knee and toe clearance for a wheelchair user to pull up and under the table/desk. Plaintiff eats and works at the guestroom desk and this is critical information for him. Here, the Hotel reservation website provides no information about the accessibility of the table/desk in the accessible guestroom. This leaves Plaintiff unsure he will be able to use the table/desk in the Hotel room.

25. Plaintiff has had tremendous difficulty with using lavatory sinks in the

1 past because sinks were cabinet style sinks or had low hanging aprons that did
2 not provide knee clearance for a wheelchair user to pull up and under or. Here,
3 the Hotel reservation website provides no information about the accessibility
4 of the sinks in the accessible guestroom other than to use a naked label
5 “accessible.”

6 26. Finally, Plaintiff cannot transfer from his wheelchair to a shower seat
7 without grab bars but the hotel does not mention if there are any grab bars in
8 the shower. The hotel clearly understands the critical importance of grab bars,
9 mentioning them for the toilet, but says nothing about the shower.

10 27. Plaintiff does not need an exhaustive list of accessibility features.
11 Plaintiff does not need an accessibility survey to determine if a room works for
12 him. Plaintiff, like the vast majority of wheelchair users, simply needs a
13 handful of features to be identified and described with a modest level of detail
14 to make an independent assessment of whether the “accessible” hotel room
15 works for him. These things comprise the basics of what information is
16 reasonably necessary for Plaintiff (or any wheelchair user) to assess
17 independently whether a given hotel or guest room meets his or her
18 accessibility needs.

19 28. But because the Defendants have failed to identify and describe the core
20 accessibility features in enough detail to reasonably permit individuals with
21 disabilities to assess independently whether a given hotel or guest room meets
22 his accessibility needs, the Defendants fail to comply with its ADA obligations
23 and the result is that the Plaintiff is unable to engage in an online booking of
24 the hotel room with any confidence or knowledge about whether the room will
25 actually work for him due to his disability.

26 29. This lack of information created difficulty for the Plaintiff and the idea
27 of trying to book this room -- essentially ignorant about its accessibility --
28 caused difficulty and discomfort for the Plaintiff and deterred him from

1 booking a room at the Hotel

2 30. As a veteran ADA tester, Plaintiff is aware that he needs to return to the
3 hotel website and to patronize the hotel in order to have standing to see that
4 the hotel comes into compliance with the ADA's mandate regarding its
5 reservation policies. Thus, plaintiff will use the hotel's website reservation
6 system to book a room and travel to the hotel when it has been represented to
7 him that the hotel's website reservation system is accessible. Plaintiff will be
8 discriminated against again, i.e., be denied his lawfully entitled access, unless
9 and until the defendant is complies with the law.

10 31. Plaintiff has reason and motivation to use the defendant's hotel
11 reservation and to stay at the defendant's hotel in the future. Among his
12 reasons and motivations are to assess these policies and facilities for
13 compliance with the ADA and to see his lawsuit through to successful
14 conclusion that will redound to the benefit of himself and all other similarly
15 situated.

16 32. Plaintiff routinely revisits and uses the facilities and accommodations
17 of places he has sued to confirm compliance and to enjoy standing to
18 effectuate the relief promised by the ADA.

19
20 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**

21 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
22 Defendants.) (42 U.S.C. section 12101, et seq.)

23 33. Plaintiff re-pleads and incorporates by reference, as if fully set forth
24 again herein, the allegations contained in all prior paragraphs of this
25 complaint.

26 34. Under the ADA, it is an act of discrimination to fail to make reasonable
27 modifications in policies, practices, or procedures when such modifications
28 are necessary to afford goods, services, facilities, privileges advantages or

1 accommodations to person with disabilities unless the entity can demonstrate
2 that taking such steps would fundamentally alter the nature of the those goods,
3 services, facilities, privileges advantages or accommodations. See 42 U.S.C. §
4 12182(B)(2)(A)(ii).

5 35. Specifically, with respect to reservations by places of lodging, a
6 defendant must ensure that its reservation system, including reservations
7 made by “any means,” including by third parties, shall:

- 8 a. Ensure that individuals with disabilities can make
9 reservations for accessible guest rooms during the same
10 hours and in the same manner as individuals who do not
11 need accessible rooms;
- 12 b. Identify and describe accessible features in the hotels and
13 guest rooms offered through its reservations service in
14 enough detail to reasonably permit individuals with
15 disabilities to assess independently whether a given hotel
16 or guest room meets his or her accessibility needs; and
- 17 c. Reserve, upon request, accessible guest rooms or specific
18 types of guest rooms and ensure that the guest rooms
19 requested are blocked and removed from all reservations
20 systems.

21 *See* 28 C.F.R. § 36.302(e).

22 36. Here, the defendant failed to modify its reservation policies and
23 procedures to ensure that it identified and described accessible features in the
24 hotels and guest rooms in enough detail to reasonably permit individuals with
25 disabilities to assess independently whether a given hotel or guest room meets
26 his or her accessibility needs and failed to ensure that individuals with
27 disabilities can make reservations for accessible guest rooms during the same
28 hours and in the same manner as individuals who do not need accessible

rooms.

II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ. Code § 51-53.)

37. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia, that persons with disabilities are entitled to full and equal accommodations, advantages, facilities, privileges, or services in all business establishment of every kind whatsoever within the jurisdiction of the State of California. Cal. Civ. Code § 51(b).

38. The Unruh Act provides that a violation of the ADA is a violation of the Unruh Act. Cal. Civ. Code, § 51(f).

39. Defendants’ acts and omissions, as herein alleged, have violated the Unruh Act by, inter alia, failing to comply with the ADA with respect to its reservation policies and practices.

40. Because the violation of the Unruh Civil Rights Act resulted in difficulty and discomfort for the plaintiff, the defendants are also each responsible for statutory damages, i.e., a civil penalty. *See* Civ. Code § 52(a).

PRAYER:

Wherefore, Plaintiff prays that this Court award damages and provide relief as follows:

1. For injunctive relief, compelling Defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.

2. For equitable nominal damages for violation of civil rights. See *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021) and any other equitable relief the Court finds appropriate.

3. Damages under the Unruh Civil Rights Act, which provides for actual damages and a statutory minimum of \$4,000 for each offense.

4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; and Cal. Civ. Code § 52(a).

Dated: April 4, 2021

CENTER FOR DISABILITY ACCESS

By: /s/ Russell Handy
 Russell Handy
 Attorney for Plaintiff